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**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**11 SANDRA KIRKMAN, CARLOS
12 ALANIZ, individually and successors-in-
13 interest to JOHN ALANIZ, deceased,

14 Plaintiffs,

15 vs.

16 STATE OF CALIFORNIA, RAMON
17 SILVA, and DOES 1-10, inclusive,

18 Defendants.

Case No. 2:23-cv-07532-DMG-SSC

Assigned to:

Hon. Dolly M. Gee

Hon. Magistrate Stephanie S.
Christensen**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
WITHDRAWAL AND TO MODIFY
THE SCHEDULING ORDER**

Date: December 20, 2024

Time: 9:30 a.m.

Courtroom: 8C

Judge: Honorable Dolly M. Gee

Trial Date: 04/15/2025

Action Filed: 7/28/2023

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2 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION**

3 **I. INTRODUCTION**

4 This Court should deny Defendants' motion for withdrawal and motion to
5 modify the scheduling order. Defendants have known from the initiation of this case
6 that the Attorney General's Office would be representing the State of California by
7 and through the California Highway Patrol ("CHP") and Officer Silva. Defense
8 counsel, the Attorney General's Office ("AGO"), has also known that another one of
9 their clients, the California Department of Justice Police Shooting Investigation
10 Team ("CaPSIT") conducted an independent investigation of the shooting, as
11 required by AB 1506 and that the investigation began on the date of the incident.

12 The motion should also be denied because Defendants do not establish good
13 cause for withdrawal based on a purported conflict under California Rules of
14 Professional Conduct 1.7. Defendants also do not establish good cause to extend all
15 of the dates and deadlines in this case by six months, as Federal Rule of Civil
16 Procedure, Rule 16 requires. The California Department of Justice's ("DOJ")
17 investigation, through the CaPSIT unit, is completed. The CaPSIT unit concluded
18 that it would not criminally charge Officer Silva for his use of deadly force against
19 Decedent, John Alaniz ("Mr. Alaniz"). This outcome is consistent with the CHP and
20 Officer Silva's position in the instant federal civil case. Defense counsel's argument
21 that a purported conflict exists lack merit and even if these reasons did constitute a
22 conflict, they do not establish any changed circumstances such that Defendants
23 could not have filed this motion months ago, or even at the outset of this case. It is
24 unclear from Defendants' moving papers how or whether the DOJ is a client of the
25 AGO's, and in what capacity the AGO represents the DOJ, if at all. If Defense
26 Counsel is permitted to withdraw as counsel due to a conflict arising from the
27 Attorney General's Office joint representation of the defendants in this case and the
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1 DOJ in other cases, such a conflict would exist in all cases involving a CHP officer-
2 involved shooting of an unarmed civilian. The Attorney General's Office has
3 established internal ethical wall to prevent against this exact scenario. Nevertheless,
4 if these are the circumstances constituting cause for withdrawal, Defense Counsel
5 should have requested leave to withdraw at the beginning stages of this case.

6 In addition, Defendants fail to establish good cause to modify the scheduling
7 order and extend all dates, including the trial date by six months. Not only has the
8 Court already modified the scheduling order (Dkt. No. 45), including extending the
9 fact discovery cutoff and the expert disclosure and discovery deadlines, but the
10 parties had already completed fact discovery and retained experts. Defendants
11 request that substitute counsel have six months to review the discovery documents
12 in the case, which is an unreasonably long delay in the resolution of this case. In
13 fact, substituted counsel will have the benefit of fact discovery being nearly
14 complete, experts retained and able to be disclosed by the current initial disclosure
15 date of January 14, 2025, and trial calendared for over four months away. Therefore,
16 regardless of how the Court rules on Defendants' motion to withdraw, the Court
17 should deny Defendants' motion to modify the scheduling order, for failure to
18 establish good cause.

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20 **II. LEGAL STANDARD**

21 An attorney may withdraw as counsel with leave of court. *See Darby v. City*
22 *of Torrance*, 810 F. Supp. 275, 276 (C.D. Cal. 1992). "The decision to grant or deny
23 counsel's motion to withdraw is committed to the discretion of the trial court."
24 *Kassab v. San Diego Police Dep't*, No. 07-cv-1071 WQH (WMc), 2008 WL
25 251935, at *1 (S.D. Cal. Jan. 29, 2008) (citation omitted). Moreover, the motion for
26 leave to withdraw must be supported by "good cause." *Evolv Health, LLC v.*
27 *Cosway USA, Inc.*, No. 16-cv-1602 ODW (ASx), 2017 WL 1534184, at *2 (C.D.
28 Cal. Apr. 26, 2017) (citation omitted). Additionally, pursuant to Local Rule 83-

1 2.3.2, “[a] motion for leave to withdraw must be made upon written notice given
2 reasonably in advance to the client and to all other parties who have appeared in the
3 action.”

4 Additionally, Federal Rule of Civil Procedure, Rule 16, states that a
5 scheduling order “may be modified only for good cause and with the judge’s
6 consent.” Fed. R. Civ. P. 16(b)(4). A party seeking to modify the schedule must
7 show good cause and diligence in meeting Federal Rule of Civil Procedure 16’s
8 requirements. *See* Fed. R. Civ. P. 16 advisory committee notes (1983 amendment);
9 *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th Cir. 1992) (Rule 16(b)’s
10 “good cause” standard focuses on the diligence of the party seeking modification of
11 the scheduling order). “A party demonstrates good cause for the modification of a
12 scheduling order by showing that, even with the exercise of due diligence, he or she
13 was unable to meet the timetable set forth in the order. *Matrix Motor Co. v. Toyota*
14 *Jidosha Kabushiki Kaisha*, 218 F.R.D. 667, 671 (C.D. Cal. 2003) (citing *Zivkovic v.*
15 *Southern California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002)); *Johnson*,
16 975 F.2d at 609. “Moreover, carelessness is not compatible with a finding of
17 diligence and offers no reason for a grant of relief.” *Johnson*, 875 F.2d at 609.
18 “[T]he existence or degree of prejudice to the party opposing the modification might
19 supply additional reasons to deny a motion” to modify a scheduling order. *Id.*
20 However, “[i]f the party seeking the modification ‘was not diligent, the inquiry
21 should end’ and the motion to modify should not be granted.” *Zivkovic*, 302 F.3d at
22 1087 (citation omitted); *see also Johnson*, 975 F.2d at 609.

23 **III. ARGUMENT**

24 **A. A TRUE CONFLICT UNDER CALIFORNIA RULE OF
25 PROFESSIONAL CONDUCT 1-7 DOES NOT EXIST.**

26 California Rule of Professional Conduct, Rule 1.7(a) provides “a lawyer shall
27 not, without informed written consent from each client and compliance with
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1 paragraph (d), represent a client if the representation is directly adverse to another
2 client in the same or a separate matter.” CA ST RPC Rule 1.7. Defense counsel, the
3 Attorney General’s Office, represents both the DOJ in some cases, and the CHP and
4 Officer Silva in the instant case. It is unclear from Defendants’ motion in what
5 capacity the AGO represents the DOJ. Defense counsel argues that a conflict has
6 arisen because the DOJ has taken an adverse position against the CHP and Officer
7 Silva, presumably by not permitting Defendants’ retained experts to inspect physical
8 evidence at the time noticed in Defendants’ subpoena demanding the inspection.
9 This does not constitute an adverse position, nor does it constitute a conflict
10 requiring withdrawal of counsel.

11 Rather, the DOJ’s refusal to permit inspection of evidence was due to a
12 scheduling or logistical error, as the items were only permitted to be inspected in a
13 crime lab, but the necessary arrangements for that inspection had not been made, for
14 unclear reasons. (See Declaration of Shannon J. Leap, Dkt. No. 46-1 at ¶ 3-4). At
15 the meeting where the DOJ law enforcement personnel brought the box of items of
16 evidence, they stated that counsel could reschedule the inspection and the items
17 would be made available at the crime lab to protect the integrity of the evidence. *Id.*
18 These circumstances do not constitute an adverse position between clients and do
19 not rise to the level of a conflict of interest.

20 Defense Counsel also argues that they received objections to their requests for
21 the documents produced pursuant to Plaintiffs’ July 31, 2024 subpoena to the DOJ
22 requesting the investigative file following the conclusion of the CaPSIT. Defendants
23 provide no information as to when they received these objections, nor the nature of
24 these objections. Moreover, the DOJ produced the documents to plaintiffs on
25 September 13, 2024 and defendants have also not served any request for production
26 of documents on Plaintiffs for the production of the documents produced pursuant to
27 the aforementioned subpoena.

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1 Defense Counsel also notes that they will need to scrutinize the DOJ's
2 investigation of the incident in order to effectively represent their clients, CHP and
3 Officer Silva. It is again unclear the need or purpose of this scrutiny, especially
4 when the DOJ CaPSIT unit concluded that criminal charges would not be brought
5 against Officer Silva – a position consistent with Defendants' position in this civil
6 case. Moreover, the DOJ is not a party to this civil rights case; has already published
7 its findings regarding its investigation, concluding that it will not charge Officer
8 Silva with criminal charges; has not notified any party that the investigation results
9 are being reconsidered or reopened; or that any new evidence has come to light such
10 that circumstances of the investigation or its outcome are being reconsidered.

11 Finally, the circumstances that Defense Counsel describes as constituting a
12 conflict in this case can potentially exist in any case in which an unarmed civilian is
13 shot and killed by a CHP officer, requiring that the California DOJ investigate the
14 shooting, pursuant to AB 1506 and that Deputy Attorneys General from the Office
15 of the Attorney General would represent the involved officers and the California
16 Highway Patrol. In the years since the passing of AB 1506, Plaintiffs' Counsel, Mr.
17 Dale K. Galipo, has litigated many cases involving the CHP and an officer-involved
18 shooting of an unarmed civilian, requiring the DOJ to conduct an independent
19 investigation. This is the first time the AGO's office has requested leave to
20 withdraw due to a purported conflict in a case where Mr. Galipo represents the
21 Plaintiffs. Inviting such a conflict of interest was not the intent of AB 1506, and
22 Defendants should not now be allowed at this late stage of the case to cause further
23 delay due to information that they have had for the entire duration of the case.

24 **B. GOOD CAUSE DOES NOT EXIST TO MODIFY THE SCHEDULING
25 ORDER.**

26 When a party "seeks to continue dates set by the court at a scheduling
27 conference, it must first show 'good cause' for modification of the scheduling order
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1 under Rule 16(b)." *Matrix Motor Co. v. Toyota Jidosha Kabushiki Kaisha*, 218
2 F.R.D. 667, 671 (C.D. Cal. 2003). Additionally, as the Court states in its Initial
3 Standing Order (Dkt. No. 8), it is important that this Court's schedule, docket, and
4 trial schedule are understood as firm. This ensures that the Court and all parties are
5 able to litigate the case with an understanding that the deadlines are to be followed
6 and respected. In their motion, Defendants have not met their burden to establish
7 that good cause exists to modify the scheduling order. The conditions which
8 Defendants argue merit withdrawal of counsel have existed for the entire duration of
9 the case (i.e. Defense Counsel represents both the DOJ in some cases, and represents
10 the CHP and Officer Silva in this case). Defendants therefore cannot establish that
11 they have exercised diligence in timely bringing this motion, so as to avoid the need
12 to modify the court's scheduling order. Moreover, the specific reasons Defendants
13 cite as constituting a conflict occurred on November 21, 2024 in one instance, and
14 Defendants fail to provide any timeline for the other instances. Defendants bear the
15 burden of establishing that they have acted with diligence, and therefore have not
16 established good cause sufficient to merit modifying the scheduling order.

17 Additionally, Defendants will not suffer any prejudice from a denial of their
18 request to modify the Scheduling Order. Defendants have deposed both Plaintiffs,
19 the Decedent's grandparents (who are not parties to this action or witnesses to the
20 incident), and two of percipient witnesses to the shooting. Plaintiffs have also
21 deposed Defendant Silva, as well as Officer Van Dragt, who was a percipient
22 witness to the shooting and had a similar position and perspective to Defendant
23 Silva but deployed his taser instead of his firearm at Decedent because he
24 recognized that the object in Decedent's hand was not a firearm. Prior to the DOJ's
25 production of documents responsive to Plaintiffs' subpoena, Defendants were in
26 custody of, and produced many records, including: audio recordings of the 911 calls
27 and dispatch channels, Defendant Silva's body worn video camera footage, dashcam
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1 footage from the semi-truck that Decedent jumped in front of prior to the shooting,
2 volumes of scene photos, Defendant Silva's and Officer Van Dragt's post-incident
3 interview transcription, crime scene logs, and other materials from the investigative
4 file.

5 Furthermore, Defendants have made no showing as to why substitute counsel
6 would need six months to conduct additional discovery and prepare the case for
7 trial, especially considering that experts have long-been retained and fact discovery
8 – by Defendants' own account – is near complete. Though substitute counsel has
9 provided a declaration in support of Defendants' motion to withdraw and modify the
10 scheduling order, substitute counsel has provided no basis, apart from vague
11 assertions of their need to review the documents in the case, to support a six-month
12 extension of all dates and deadlines, including the trial. Moreover, since the Court
13 granted Defendants' *ex parte* application to extend the fact discovery cutoff and
14 other related deadlines on November 27, 2024 (Dkt. No. 45), Defendants have not
15 propounded any additional discovery, noticed any additional depositions, or served
16 any additional subpoenas.

17 Conversely, a six-month delay in the resolution of this case would prejudice
18 plaintiffs. Plaintiffs have diligently conducted and cooperated with discovery
19 throughout the duration of this case. Courts routinely acknowledge the interest
20 plaintiffs have in expeditious litigation, recognizing that stays create a “danger of
21 denying justice by delay.” *Blue Cross & Blue Shield of Alabama v. Unity Outpatient*
22 *Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir. 2007). This is in part because delay
23 “inherently increases the risk that witnesses' memories will fade and evidence will
24 become stale.” *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002); see also
25 *Est. of Lopez v. Suhr*, No. 15-CV-01846-HSG, 2016 WL 1639547 at *4 (N.D. Cal.
26 Apr. 26, 2016) (“Nearly 14 months have passed since the shooting of Perez Lopez,
27 and the Court agrees with Plaintiffs that the memories of witnesses, especially those

1 who may not be cooperating with the SFPD, may fade with time.”). Here, Plaintiffs
2 will have waited nearly three years for the trial in this case, since the death of their
3 son in May 2022. Defendants request the Court to continue the trial an additional six
4 months – a request the court has already denied upon a prior application – from
5 April 15, 2025 to October 2025. Although Defendants argue that because fact
6 discovery is nearly closed, the risk of witnesses’ memories fading is low, this
7 argument fails to acknowledge the risk of witnesses’ memories fading between now
8 and October 2025. Plaintiffs should not now be punished by an extensive and
9 unwarranted delay to have their day in court, especially when this case is not
10 particularly complicated. The subject incident was captured on video, the Defendant
11 officer, Plaintiffs, Decedent’s grandparents, and percipient witnesses have been
12 deposed, and experts have been retained. Defendants should not now be allowed at
13 this late stage of the case to cause further delay due to information that they have
14 had for the entire duration of the case.

15 **V. CONCLUSION**

16 For the foregoing reasons, Plaintiff respectfully requests that the Court deny
17 Defendants’ Motion for Withdrawal and to Modify the Scheduling Order in its
18 entirety.

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20 Respectfully submitted,

21 DATED: December 17, 2024 LAW OFFICES OF DALE K. GALIPO
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25 By /s/ Shannon J. Leap
26 Dale K. Galipo
Shannon J. Leap
27 Attorneys for Plaintiffs
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